IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

HON'BLE MR JUSTICE BILAL NAZKI

and
HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 1872 of 2004

Between:

M/s S.L.S. Textiles Ltd, Bhoomireddipally, Chittoor District, rep by its Internal Auditor Mr. S. Ramaswamy.

..... PETITIONER

AND

1 The Commercial Tax Officer-II, Chittoor.
2 The Commercial Tax Officer (Intelligence), Chittoor.
3 The Appellate Dy. Commissioner (CT), Kurnool.
4 The Dy. Commissioner (CT), Chittoor.
5 The Commissioner of Commercial Taxes, Govt. of A.P. Commercial Taxes Complex, Nampally Station Road, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, Order or a direction, particularly in the nature of a Writ of Mandamus, declaring the action of the 1st respondent in denying interest on the refund amount of Rs. 44,61,990/- ignoring the directions of this Hon'ble Court in W.P.No. 6410 of 2003, dated 3-9-2003 as illegal, arbitrary and quite contrary to the provisions of the APGST Act and consequently direct the 1st respondent to pay interest at 12% P.A. which becomes payable to the Petitioner under Sections 33-B, E & F of the APGST Act on the refund amount of Rs. 44,61,990/- in terms of the

order of this Hon'ble Court in TRCs No. 8 & 9 of 1994 , dt. 8-11-2001 and T.A.Nos. 1443 and 1444/99, dated 22-7-2003 (on the file of the Sales Tax Appellate Tribunal) for the assessment years 1989-90 to 92-93 (CST).

Counsel for the Petitioner:MR.A.K.JAISWAL

Counsel for the Respondents: MR.K.RAJI REDDY(SPL.SC FOR CT)

The Court made the following :

(per Hon'ble Sri Justice Bilal Nazki)

Heard learned counsel for the parties. Counter has been filed and with the consent of the learned counsel for the parties, the matter is disposed of at the stage of admission.

Controversy is very short. The petitioner was entitled to refund of an amount of Rs.44,61,990/- . The order in tax revision case was passed on 8-11-2001 and refund was actually made on 7-8-2003. Writ petition has been filed seeking interest for the period for which the amount was not refunded contrary to the provisions of the A.P. General Sales-tax Act. The respondents claim that they had gone to the Supreme Court challenging the order of the High Court but the appeal was dismissed. They also claim that the papers relating to the case were received from the High Court and the appellate authority in December, 2002 and thereafter a notice had been given to the petitioner to file a claim within three months for refund and after it filed an application for refund, the payment was made within a period of six months. Sections, 33, 33B and 33F lay down thus:

> 33. **Refunds:** The assessing authority or the licensing authority, as the case may be, shall refund the tax or the licence fees, if any, paid, provisionally by an assessee or licensee for any particular period, if it is found to be in excess of the tax or the licence fees payable by him for the said period, or at the option of the assessee or licensee, adjust such excess towards any tax or licence fees due in respect of any other period:
>
> Provided that the assessing or licensing authority, as the case may be, may first apply the excess paid in respect of any period towards the recovery of any amount, in respect of which a notice of demand may have been issued, and shall then refund the balance, if any.
>
> 33B **Refund on appeal, etc:** Where as a result of any order passed in appeal or other

proceedings under this Act, refund of any amount becomes due to the assessee or licensee, the assessing or licensing authority shall refund the amount to the assessee or licensee without his having to make any claim in that behalf, or adjust or apply, such amount as provided in Section 33.

33F **Interest on refund where no claim need be made:** (1) Where a refund is due to the assessee or licensee in pursuance of an order referred to in Section 33B and the assessing or the licensing authority does not grant the refund within a period of six months from the date of such order, the State Government shall pay to the assessee or the licensee simple interest at 12% per annum on the amount of refund due from the date immediately following the expiry of the period of six months aforesaid to the date on which the refund is granted.

(2) Where the refund is withheld under the provisions of Section 33C the State Government shall pay interest at the aforesaid rate on the amount of refund ultimately determined to be due as a result of the appellate or further proceedings for the period commencing after the expiry of six months from the date of the order referred to in Section 33C to the date the refund is granted.

Therefore, the refund becomes payable within six months after an order is passed under Section 33B of the Act by an appellate authority or in any other proceedings under the Act. Since the tax revision case was filed before the High Court and such remedy was available under the Act, the date from which the time has to be reckoned would the date on which High Court decided the matter. Admittedly, High Court decided the matter on 8-11-2001 and as such the refund had to be made before 8-5-2002. Once an order of refund is made in terms of Section 33B of the Act, there is no need for the petitioner to file an application for refund or to make any claim for refund which is also made clear by Section 33B itself. For these reasons, we hold that the petitioner was entitled to interest with effect from 8-11-2002 till 7-8-2003. Respondents shall work out the interest payable and pay the same to the petitioner as early as possible. Interest shall be calculated till the date payment is actually made.

It is submitted that after the High Court had passed an order, two matters were still pending before the Tribunal and following the order of the High Court the Tribunal passed an order of refund in those cases on 22-7-2002. In those cases also, for assessment years 1991-92 and 1992-93, interest has not been paid to the petitioner. We hold that the petitioner is entitled to interest from the date the order directing refund was passed till the payment was actually made, excluding a period of six months.

Writ petition is accordingly allowed. No costs.

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BILAL NAZKI, J

_____

S.ANANDA REDDY, J

10th August, 2004.

nmr

Rule is made absolute as above.

Witness Hon'ble Sri Devinder Gupta, the Chief Justice, High Court of Andhra Pradesh, Hyderabad on this TUESDAY the Tenth Day of August, Two Thousand And Four.

ASSISTANT REGISTRAR

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SECTION OFFICER

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